

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KODI M. CADY,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner  
of Social Security,

Defendant.

NO: 12-CV-0140-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment (ECF Nos. 15, 20). These matters were heard without oral argument on November 21, 2012. Plaintiff is represented by Maureen J. Rosette. Defendant is represented by Jessica Milano. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. There being no reason to delay a decision, the hearing set for February 3, 2014, is vacated and this matter is submitted without oral argument. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

3 STANDARD OF REVIEW

4 A district court's review of a final decision of the Commissioner of Social  
5 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is  
6 limited: the Commissioner's decision will be disturbed "only if it is not supported  
7 by substantial evidence or is based on legal error." *Hill v. Astrue*, 688 F.3d 1144,  
8 1149 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means  
9 relevant evidence that "a reasonable mind might accept as adequate to support a  
10 conclusion." *Id.* (quotation and citation omitted). Stated differently, substantial  
11 evidence equates to "more than a mere scintilla[,] but less than a preponderance."  
12 *Id.* (quotation and citation omitted). In determining whether this standard has been  
13 satisfied, a reviewing court must consider the entire record as a whole rather than  
14 searching for supporting evidence in isolation. *Id.*

15 In reviewing a denial of benefits, a district court may not substitute its  
16 judgment for that of the Commissioner. If the evidence in the record "is  
17 susceptible to more than one rational interpretation, [the court] must uphold the  
18 ALJ's findings if they are supported by inferences reasonably drawn from the  
19 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district  
20 court "may not reverse an ALJ's decision on account of an error that is harmless."

1 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
2 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
3 The party appealing the ALJ’s decision generally bears the burden of establishing  
4 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 5 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

6 A claimant must satisfy two conditions to be considered “disabled” within  
7 the meaning of the Social Security Act. First, the claimant must be “unable to  
8 engage in any substantial gainful activity by reason of any medically determinable  
9 physical or mental impairment which can be expected to result in death or which  
10 has lasted or can be expected to last for a continuous period of not less than twelve  
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be  
12 “of such severity that he is not only unable to do his previous work[,] but cannot,  
13 considering his age, education, and work experience, engage in any other kind of  
14 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
15 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to  
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §  
18 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
19 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in  
20

1 “substantial gainful activity,” the Commissioner must find that the claimant is not  
2 disabled. 20 C.F.R. § 404.1520(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers  
6 from “any impairment or combination of impairments which significantly limits  
7 [his or her] physical or mental ability to do basic work activities,” the analysis  
8 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant’s impairment  
9 does not satisfy this severity threshold, however, the Commissioner must find that  
10 the claimant is not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to  
12 several impairments recognized by the Commissioner to be so severe as to  
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §  
14 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. 20 C.F.R. § 404.1520(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity  
18 of the enumerated impairments, the Commissioner must pause to assess the  
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R. §  
2 404.1545(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past ("past relevant work"). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is  
6 capable of performing past relevant work, the Commissioner must find that the  
7 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of  
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner  
12 must also consider vocational factors such as the claimant's age, education and  
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
14 Commissioner must find that the claimant is not disabled. 20 C.F.R. §  
15 404.1520(g)(1). If the claimant is not capable of adjusting to other work, the  
16 analysis concludes with a finding that the claimant is disabled and is therefore  
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.  
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such  
2 work “exists in significant numbers in the national economy.” 20 C.F.R. §  
3 404.1560(c); *Beltran v. Astrue*, 676 F.3d 1203, 1206 (9th Cir. 2012).

#### 4 ALJ’S FINDINGS

5 Plaintiff applied for a period of disability and disability insurance benefits on  
6 July 21, 2009. Tr. 147-153. Her application was denied initially and on  
7 reconsideration. Tr. 93-95, 105-106. Plaintiff filed a timely request for hearing  
8 and appeared with an attorney at a hearing before an administrative law judge  
9 (“ALJ”) on September 16, 2010. Tr. 41-83.

10 The ALJ issued his decision on September 23, 2010, finding that Plaintiff  
11 had severe impairments and that Plaintiff was not capable of performing past  
12 relevant work. Tr. 20-31. Because the ALJ found that work existed in the national  
13 economy that Plaintiff could perform, however, he found that Plaintiff was not  
14 disabled. Tr. 24-31. On February 17, 2010, the Appeals Council denied Plaintiff’s  
15 request for review, making the ALJ’s decision the Commissioner’s final decision.  
16 Tr. 1-5; 20 C.F.R. § 404.981.

#### 17 ISSUES

18 Plaintiff, Kodi M. Cady, seeks judicial review of the Commissioner’s final  
19 decision denying her a period of disability and disability insurance benefits under  
20 Title II of the Social Security Act. Plaintiff has identified three issues for review.

1 First, Plaintiff argues that the ALJ improperly discredited her testimony about the  
2 severity of her physical impairments. Second, Plaintiff asserts that the ALJ erred  
3 in finding her capable of performing light exertional work with certain limitations.  
4 Finally, Plaintiff argues that the Appeals Council improperly rejected the results of  
5 a psychological evaluation which Plaintiff submitted to the Commissioner after the  
6 ALJ rendered his decision.

## 7 DISCUSSION

### 8 **A. The ALJ's Adverse Credibility Findings**

9 In social security proceedings, a claimant must prove the existence of  
10 physical or mental impairment with "medical evidence consisting of signs,  
11 symptoms, and laboratory findings." 20 C.F.R. § 404.1508. A claimant's  
12 statements about his or her symptoms alone will not suffice. 20 C.F.R. §§  
13 404.1508; 404.1527. Once an impairment has been proven to exist, the claimant  
14 need not offer further medical evidence to substantiate the alleged severity of his or  
15 her symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc).  
16 As long as the impairment "could reasonably be expected to produce [the]  
17 symptoms," 20 C.F.R. § 404.1529(b), the claimant may offer a subjective  
18 evaluation as to the severity of the impairment. *Id.* This rule recognizes that the  
19 severity of a claimant's symptoms "cannot be objectively verified or measured."  
20 *Id.* at 347 (quotation and citation omitted).

1 In the event that an ALJ finds the claimant's subjective assessment  
2 unreliable, however, "the ALJ must make a credibility determination with findings  
3 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not  
4 arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958  
5 (9th Cir. 2002). In making such a determination, the ALJ may consider, *inter alia*:  
6 (1) the claimant's reputation for truthfulness; (2) inconsistencies in the claimant's  
7 testimony or between his testimony and his conduct; (3) the claimant's daily living  
8 activities; (4) the claimant's work record; and (5) testimony from physicians or  
9 third parties concerning the nature, severity, and effect of the claimant's condition.  
10 *Id.* The ALJ may also consider a claimant's "unexplained or inadequately  
11 explained failure to seek treatment or to follow a prescribed course of treatment."  
12 *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 2008). If there is no evidence  
13 of malingering, the ALJ's reasons for discrediting the claimant's testimony must  
14 be "specific, clear and convincing." *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th  
15 Cir. 2012) (quotation and citation omitted). The ALJ "must specifically identify  
16 the testimony she or he finds not to be credible and must explain what evidence  
17 undermines the testimony." *Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir.  
18 2001).

19 Here, Plaintiff argues that the ALJ improperly rejected her testimony  
20 concerning the severity of her physical limitations. Specifically, Plaintiff argues



1 that the ALJ failed to offer clear and convincing reasons for rejecting her testimony  
2 that (1) she could only stand or walk for 10 to 20 minutes at a time before needing  
3 to sit down; (2) she could only sit in a stationary position for 30 to 45 minutes at a  
4 time; (3) she could only lift 20 pounds at a time; (4) she could not bend over to  
5 pick up an object on the floor without bracing herself; and (5) she needed to lie  
6 down approximately 10 to 12 times per day for a period of 30 to 45 minutes per  
7 session in order to alleviate her back pain. ECF No. 16 at 11. Plaintiff asserts that  
8 this testimony, if properly credited, would have precluded her from performing  
9 other work existing in significant numbers in the national economy.

10 Contrary to Plaintiff's assertions, the ALJ provided specific, clear and  
11 convincing reasons for discrediting her testimony. First, the ALJ found that  
12 Plaintiff's alleged symptomology was "disproportionate to the level of pain  
13 expected from the clinical signs and findings within the medical records." Tr. 27.  
14 Specifically, the ALJ noted that Dr. Dibble had evaluated Plaintiff in August 2007  
15 and found her to "ambulate with an antalgic gait, to have full range of motion of  
16 the lumbar spine, and negative straight leg raising tests." Tr. 27. In the ALJ's  
17 view, these negative findings "would not correlate to the magnitude of pain levels  
18 as attested to by [Plaintiff]." Tr. 27.

19 Second, the ALJ observed that Plaintiff had not received formal medical  
20 treatment for her allegedly debilitating back pain in over two years. Tr. 27. The

1 ALJ also found it significant that Plaintiff had abandoned her prescription pain  
2 medication in favor of over-the-counter Tylenol Arthritis medicine. Tr. 27. In the  
3 ALJ's estimation, the fact that Plaintiff had stopped seeking medical treatment and  
4 had been taking only non-prescription painkillers tended to undermine her  
5 testimony about the severity of her back pain. *See Tommasetti*, 533 F.3d at 1039  
6 (holding that ALJ may draw adverse inference from a claimant's failure to seek an  
7 aggressive treatment program or failure to seek "an alternative or more-tailored  
8 treatment program" after discontinuing prescription medication regimen).

9 Third, the ALJ found that Plaintiff had failed to follow her doctors' repeated  
10 directives to lose weight, exercise regularly, and quit smoking. Tr. 27. The ALJ  
11 noted that many of Plaintiff's symptoms were related to her weight and that her  
12 failure to follow these simple directives demonstrated a "lack of motivation to feel  
13 better." Tr. 27. This led the ALJ to conclude that Plaintiff's admissions to "not  
14 following a consistent medical diet plan and to not exercising [by] walking or  
15 swimming shows poor effort on her part to improve." Tr. 27. This was a  
16 permissible basis for discrediting Plaintiff's testimony. *Tommasetti*, 533 F.3d at  
17 1039; *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

1 Fourth, the ALJ found that Plaintiff's complaints of rapid weight gain  
2 resulting from a thyroid procedure in early 2007<sup>1</sup> were not credible. In support of  
3 this finding, the ALJ noted that Plaintiff's historical average weight was much  
4 higher than the 130 to 140 pounds that she claimed. Citing to Plaintiff's medical  
5 records, the ALJ explained that Plaintiff weighed 188 pounds in August 2001, 202  
6 pounds in October 2003, 211 pounds in December 2004, 196 pounds in July 2005,  
7 174 pounds in August 2006, 189 pounds in May 2007, 211 pounds in November  
8 2007, 229 pounds in June 2008, 234 pounds in July 2008, and 241 pounds in  
9 March 2009. Tr. 27-28. In view of this historical evidence, the ALJ concluded  
10 that Plaintiff's claims of rapidly gaining 80 pounds following the thyroid procedure  
11 were significantly embellished: "Although [Plaintiff] continued to gain weight" the  
12 ALJ observed, she did not do so "at an alarming pace." Tr. 28.

13 Fifth, the ALJ found that there was no medical evidence to support  
14 Plaintiff's assertion that she needed to lie down 10 to 12 times per day for a period  
15 of 30 minutes at a time in order to control her back pain. In addition to this lack of  
16 evidence, the ALJ noted that Plaintiff's testimony about needing to lie down was  
17 inconsistent with prior reports that lying down caused Plaintiff significant pain and  
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19 <sup>1</sup> The record does not reflect the exact date on which the thyroid procedure was  
20 performed.

1 that *sitting* was her most comfortable position. Tr. 28. The ALJ further observed  
2 that Plaintiff sat through over one hour of testimony at the September 16, 2010  
3 hearing “without any display of discomfort in a seated position.” Tr. 28. These  
4 were permissible bases for rejecting Plaintiff’s testimony that she needed to lie  
5 down 10 to 12 times per day. Tr. 28. *See Thomas*, 278 F.3d at 958 (ALJ may  
6 consider inconsistencies in claimant’s testimony when assessing credibility); SSR  
7 96-7p (“In instances where the individual attends an administrative hearing  
8 conducted by the adjudicator, the adjudicator may also consider his or her own  
9 recorded observations of the individual as part of the overall evaluation of the  
10 credibility of the individual’s statements.”).

11 Finally, the ALJ observed that the timing of Plaintiff’s claim for disability  
12 benefits was suspect. Specifically, the ALJ observed that Plaintiff initially stopped  
13 working for reasons unrelated to her disability when her former employer moved  
14 its assembly plant to Mexico. Tr. 28. Further, the ALJ noted that Plaintiff “is  
15 apparently waiting for her company pension of \$700 a month available to her at the  
16 age of 55 on her next birthday to come forth while she continues to collect  
17 unemployment benefits and look for employment in the meantime.” Tr. 28. In the  
18 ALJ’s view, these circumstances tended to suggest that Plaintiff was exaggerating  
19 the severity of her symptoms in order to avoid having to go back to work. Tr. 28.  
20

1 Having thoroughly reviewed the record, the Court finds that the ALJ  
2 supported his adverse credibility findings with specific, clear and convincing  
3 findings which are supported by substantial evidence. As the ALJ appropriately  
4 recognized, the record indicates that Plaintiff's physical limitations are not so  
5 severe as to preclude her from performing light duty work with appropriate  
6 limitations. Accordingly, the Court concludes that the ALJ did not arbitrarily  
7 discredit Plaintiff's testimony.

8 **B. The ALJ's Residual Functional Capacity Assessment**

9 As noted above, residual functional capacity ("RFC") is defined as the  
10 claimant's ability to perform physical and mental work activities on a sustained  
11 basis despite his or her limitations. 20 C.F.R. § 404.1545(a)(1). In making an  
12 RFC assessment, the Commissioner is required to consider all of the claimant's  
13 impairments, including impairments that are not "severe" within the meaning of  
14 the regulations. 20 C.F.R. § 404.1545(a)(2).

15 In this case, the ALJ assessed Plaintiff's RFC as follows:

16 [C]laimant has the residual functional capacity to perform routine  
17 learned light exertional work as defined in 20 CFR [§] 404.1567(b)  
18 except the claimant could only stand and walk for up to 4 hours in an  
19 8 hour day, could not walk up over one flight of stairs, could not  
20 climb ladders, could not crawl, and could not work at heights. The  
claimant would need a sit/stand option and/or be permitted to stretch  
not more than one to three minutes per hour when sitting. The  
claimant could not perform high stress work, could not perform  
intense twisting of her upper body, could not bend from the waist to

1 pick up objects from the floor, and could not perform fast-paced  
2 production rate work.

3 Tr. 24 (footnote omitted). In making this finding, the ALJ “considered all  
4 symptoms and the extent to which these symptoms can reasonably be accepted as  
5 consistent with the objective medical evidence and other evidence.” Tr. 24.

6 Here, Plaintiff contends that the ALJ erred as a matter of law in finding her  
7 capable of performing routine learned light exertional work at step five of the  
8 sequential analysis. Specifically, Plaintiff argues that the limitations identified in  
9 the RFC (*i.e.*, no more than four hours of standing or walking per day, no more  
10 than one flight of stair climbing, no climbing on ladders, no crawling, no working  
11 at heights, and a sit/stand option with periodic stretching breaks) effectively  
12 limited Plaintiff to performing *sedentary* work rather than light exertional work.  
13 ECF No. 22 at 2. Plaintiff’s primary argument is that light exertional work  
14 requires a person to be able to stand or walk for up to *six* hours out of an eight-hour  
15 workday (*see* SSR 83-10) and that Plaintiff cannot satisfy this requirement because  
16 the ALJ expressly found that she was capable of standing or walking for no more  
17 than *four* hours per workday. ECF No. 16 at 10; ECF No. 22 at 2. Plaintiff also  
18 argues that her inability to perform intense twisting of her upper body and inability  
19 to bend from the waist to pick up objects from the floor precludes her from  
20 stooping occasionally as required for light exertional work. Given that the ALJ’s  
findings “effectively limited” her to performing sedentary work, Plaintiff argues,

1 she “should have been found disabled based on GRID Rule 201.14.” ECF No. 16  
2 at 11.

3 Plaintiff’s efforts to achieve a disability determination based upon Medical-  
4 Vocational Rule (“Grid Rule”) 201.14 are unavailing. As Defendant correctly  
5 notes, Plaintiff’s arguments are “predicated upon the false premise that Plaintiff  
6 was limited to work at the sedentary exertional level.” ECF No. 21 at 24. The  
7 ALJ did not, either expressly or effectively, find that Plaintiff was limited to  
8 performing sedentary work. Rather, the ALJ found that Plaintiff’s abilities  
9 *exceeded* those required for sedentary work, but did not meet all or substantially all  
10 of the requirements for light exertional work. In other words, the ALJ found that  
11 Plaintiff’s abilities fell somewhere in-between the requirements for sedentary work  
12 and light exertional work.

13 In light of this finding, the ALJ was required to use the Grid Rules as a  
14 *framework* for making his disability determination rather than treating them as  
15 dispositive. SSR 83-12. That is precisely what the ALJ did. Tr. 30. First, the  
16 ALJ explained that the Grid Rules direct a finding of “disabled” or “not disabled”  
17 only when a claimant can perform all or substantially all of the exertional demands  
18 at a given level of exertion. Tr. 30 (citing SSR 83-11). The ALJ then explained  
19 that, to the extent a claimant cannot perform all or substantially all of the exertional  
20 demands at a given level of exertion, the Grid Rules are used as a framework for

1 decision-making. Tr. 30 (citing SSR 83-12 and SSR 83-13). Recognizing that  
2 Plaintiff's limitations precluded her from performing all or substantially all of the  
3 requirements of light exertional work, the ALJ then asked the vocational expert,  
4 Daniel McKinney, Sr., whether there were specific light exertional jobs in the  
5 national economy which could accommodate Plaintiff's specific limitations. Tr.  
6 30. The vocational expert testified that someone with Plaintiff's limitations could  
7 work as a hand packer/packager or a production inspector/weld inspector—both  
8 classified as light exertional work—with a sit-stand option. Tr. 78-82. The ALJ's  
9 use of this procedure and acceptance of the vocational expert's testimony was  
10 proper pursuant to SSR 83-12. Accordingly, the ALJ did not err in finding  
11 Plaintiff capable of performing routine learned light exertional work at step five of  
12 the sequential analysis.

### 13 **C. Evidence of Mental Impairment**

14 Plaintiff's final contention is that Defendant did not adequately consider  
15 evidence of her mental impairments in reaching its decision. ECF No. 16 at 13.  
16 Specifically, Plaintiff argues that a psychological assessment performed by Dr.  
17 Dennis Pollack—which Plaintiff provided to the Appeals Council after the ALJ  
18 rendered his decision—demonstrates that Plaintiff “would have marked limitations  
19 with regard to her ability to perform activities within a schedule, maintain regular  
20 attendance, and be punctual within regular tolerances; and complete a normal



1 workday and workweek without interruptions from psychologically based  
2 symptoms and to perform at a consistent pace without an unreasonable number and  
3 length of rest periods.” ECF No. 16 at 15-16. According to Plaintiff, this evidence  
4 should have been incorporated into her RFC. ECF No. 16 at 16.

5 As a threshold matter, the Court finds that it may properly consider Dr.  
6 Pollack’s report since the Appeals Council considered it in denying Plaintiff’s  
7 request for review and therefore incorporated it into the administrative record. *See*  
8 *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1162-63 (9th Cir. 2012)  
9 (“[W]e hold that when the Appeals Council considers new evidence in deciding  
10 whether to review a decision of the ALJ, that evidence becomes part of the  
11 administrative record, which the district court must consider when reviewing the  
12 Commissioner’s final decision for substantial evidence.”).

13 Having reviewed Dr. Pollack’s report in its entirety, the Court concludes that  
14 Plaintiff’s arguments are unavailing. Although Dr. Pollack noted a mild limitation  
15 in Plaintiff’s “ability to maintain attention and concentration for extended periods”  
16 and marked limitations in her abilities to “perform activities within a schedule,  
17 maintain regular attendance, and be punctual within customary tolerances,” and  
18 “complete a normal workday and workweek without interruption from  
19 psychologically based symptoms and to perform at a consistent pace without an  
20 unreasonable number and length of rest periods,” these limitations appear to be

1 almost entirely unsupported by objective medical evidence. Notably, these  
2 findings appear on a standardized check-the-box form and are not referenced  
3 elsewhere in Dr. Pollack's report. Tr. 402. Despite being asked to do so, Dr.  
4 Pollack did not explain these limitations in narrative form. *See* Tr. 404.  
5 Accordingly, these findings are entitled to little weight. *See Molina v. Astrue*, 674  
6 F.3d 1104, 1111-12 (9th Cir. 2012) (explaining that the Ninth Circuit has  
7 consistently permitted ALJs to "reject check-off reports that do not contain any  
8 explanation of the bases of the [physician's] conclusions") (quotation, citation and  
9 modifications omitted).

10 Moreover, the findings above are entirely inconsistent with Plaintiff's actual  
11 work history. The record reflects that Plaintiff worked for her former employer for  
12 32 straight years before the company relocated its operations to Mexico. Tr. 48. It  
13 seems difficult to imagine that Plaintiff would have been able to maintain this  
14 exemplary work history if she were prone to being tardy, absent, or interrupted by  
15 psychological symptoms. Given that Dr. Pollack's findings were ostensibly based  
16 upon Plaintiff's *static* mental functioning levels rather than a specific disorder  
17 which post-dated her employment, there is no basis for incorporating them into  
18 Plaintiff's RFC. Accordingly, the Court finds that the Appeals Council did not err  
19 in declining to revisit the ALJ's decision.  
20

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 20) is

4 **GRANTED.**

5 The District Court Executive is hereby directed to file this Order, enter  
6 Judgment for Defendant, provide copies to counsel, and **CLOSE** this file.

7 **DATED** this 21<sup>st</sup> day of November, 2012.

8 *s/ Thomas O. Rice*

9 THOMAS O. RICE  
10 United States District Judge